IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE
WRIT PETITION NO. 4709 OF 2005

Dr.(Smt) Unmeshaben C. Shah ... Petitioner

Versus

Union of India and Ors. ... Respondents

Mr. S.P. Saxena for Petitioner.

Mr. R. Ashokan for Respondent Nos. 2 and 3.

CORAM : F.I. REBELLO &
DR. D.Y. CHANDRACHUD,JJ.
DATED : 26TH SEPTEMBER, 2005

P.C.

. The Petitioner was holding the post of Medical Officer (Ayurveda) in the administration of Union Territory of Daman and Diu of Respondent No. 2. The advertisement was first issued inviting applications from those who had not completed 35 years of age on 15.7.1996. The Petitioner was born on 15.7.1961. The case of the Petitioner was however, considered and appointment letter came tobe issued on 26.8.1996. The appointment letter shows that the appointment was for the period of six months only from the date of appointment or till date the Union Public Service Commission selected candidate joins the duty on regular basis, whichever is earlier. As no candidate was selected by U.P.S.C. the appointment was continued by subsequent orders in which similar terminology was used.

. Rules thereafter were notified and published in the Government Gazette on 25.4.2003. One of the requirement was that the candidate should not exceed the age of 35 years. There is a clause

providing for relaxation of age requirement upto 5 years. Accordingly instructions were issued by the Central Government. Rule 5 of the rules further provided that where the administration is of the opinion that it was necessary or expedient to do so, he may by order, for reasons to be recorded in writing and in consultation with Union Public Service Commission, relax any of the provisions of the rules with respect to any class or category of persons. It appears that Petitioner applied for relaxation of age. As set out in Paragraph 11 of the petition, that application came to be purportedly rejected. The U.P.S.C. on 9.8.2003 invited applications. The Petitioner herein also applied. The advertisement set out that the age limit is relaxable by five years for S.C./S.T./OBC and certain other categories.

. The Petitioner filed Original Application No. 567 of 2003 before the Maharashtra Administration Tribunal praying therein that the Petitioner be treated as regularised to the post of Medical Officer. There was a further relief prayed, that the court be pleased to issue direction to the administrator to grant application for age relaxation so as to enable the applicant to complete in the proposed selection to be made by

the U.P.S.C. for recruitment to the post of a Medical Officer (Ayurveda). As noted earlier this apparently was not agreed. In the selection held one candidate was selected as can be seen from the additional affidavit in reply by P.J. Bamania, Deputy Secretary (Health), Daman and Diu The candidate Dr. Bhimsen Behra is appointed on 5.9.2005 and has since joined.

. The Original Application as filed by the Petitioner came to be dismissed on 11.4.2005 against which the Petitioner has filed the present application.

. The learned counsel for the Petitioner contends that the petitioner admittedly was civil servant and considering that age relaxation ought to have been given in favour of the Petitioner. For that purpose reliance is placed on the judgment of Girish Jantilal Vaghela Vs. Union of India and Ors. reported in All India Services Law Journal, Vol.VI 2003(2) 140. The learned Division Bench of this court in the case where the petitioner therein was appointed on contract basis considering the appointment was pleased to hold that appointment was to the civil post and consequently there was jurisdiction in the respondents to give relaxation.

Our attention is also invited to the judgement in J & K Public Service Commission and Ors. Versus Dr. Narinder Mohan and Ors. (1994) 2 S.C.C. 630 in the matter of relaxation.

. Even assuming that the case of the petitioner has been considered for temporary appointment, power of relaxation is with the Administrator in consultation with U.P.S.C. In the instant case, from the pleadings in the Petition, it is clear that the Administrator choose not to relax the age as can be seen from Paragraph 11 of the Petition filed by the Petitioner. The language used in the rule is if the Administrator is of the opinion that it is necessary or expedient to do so. In the instant case, the Administrator has chosen not to do so. It is not for this court to interfere in respect of exercise of said power unless there were allegations of mala fides or arbitrariness. There are no such allegations. Considering the above, and as selected candidate has already joined, we do not think this to be a fit case to exercise an extra ordinary jurisdiction. Hence, rejected.

(F.I. REBELLO,J.)

(DR. D.Y. CHANDRACHUD,J.)